UNITED NATIONS **A**

General Assembly

Distr.
LIMITED

A/AC.242/L.18
16 August 1994

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
1-12 August 1994

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Comments of Israel on the basic texts before the Ad Hoc Committee

1. The State of Israel, as both a host State for, and a contributor of personnel in the United Nations peace-keeping missions, notes with satisfaction the activity of the General Assembly and the Sixth Committee in general, and the Ad Hoc Committee in particular, on this most important issue. Israel reaffirms its recognition of the need for international standards respecting these personnel.

Scope of the Convention (arts. 1 and 2) 1/

2. Israel is of the opinion that an overambitious text is unlikely to gain universal or widespread support, and that such support is critical if the proposed convention is to attain its goals. On the one hand, care must be taken to provide sufficient protection for relevant personnel; on the other, the subject-matter is an instrument with far-reaching consequences in municipal law as well as in the international arena.

3. Any such convention is likely to encounter resistance from States wishing to limit the impact on their sovereignty embodied in the convention. In the past, the United Nations has adopted certain conventions, which, owing to their intrusive nature, never gained wide acceptance among the community of nations. It would be truly regrettable, if such were to be the fate of the current project.

4. As such, Israel finds itself in accord with those States which prefer that the scope of application be limited in such a manner as to strike the appropriate balance between the need for protection and the sovereignty of States. Thus, it seems appropriate to adopt the text proposed by Ukraine and New Zealand initially, that is, that the scope be limited to personnel fulfilling a Security Council-mandated mission (art. 1 (2)). Any extension beyond this frame, in our opinion, may cause a large number of States to reconsider their support of the draft.

5. Further, as regards article 2, Israel is of the opinion that while associated personnel are certainly entitled to protection and special consideration, the definition of such personnel must be eminently clear. Israel thus supports the efforts of those delegates who strive to clarify the scope of application, and would suggest that this article be limited to those personnel who operate in the framework of the operation (under contractual agreement or otherwise) and who form an integral part thereof.

Privileges and immunities of United Nations personnel (art. 4) 2/

6. Concerning paragraph 2, while Israel agrees with the spirit of the provision, the term "international status" is lacking in clarity. This term is, to the best of Israel's knowledge, undefined in international law, and might only lead to disputes and contradictory interpretations.

Applicability of international humanitarian law (art. 6) 2/

7. Israel suggests that the words "as appropriate" be added after the words "human rights law" in the second line.

Respect for international character (art. 8) 2/

8. As in article 4, the term "exclusively international character" is inadequate in this context.

9. Moreover, the purpose of this article is itself unclear. If the intention is merely to reaffirm the fact that the United Nations operation is apolitical and does not represent one or other of the "sides" to a given conflict, then this ought to be stated clearly and without creating an undefined "obligation" to respect that status. If, however, the intent is to create an actual obligation to perform certain acts or prevent specific omissions, then this should be detailed in plain language.

10. In all events, Israel finds the current language of the article in need of clarification.

Duty to ensure safety and security of United Nations personnel (art. 9) 2/

11. Paragraph 1 of article 9 is indeed important and in fact lays the groundwork for all of the subsequent provisions of the convention. Israel feels that paragraphs 2 and 3 are unnecessary. These subjects are covered by extradition treaties and, if they are not, should find their expression in articles 12 and 16, which form the basis of extradition under the convention

itself. The obligations detailed in the remainder of the convention are not contingent upon the activity or inactivity of the host State, and thus the provisions of paragraph 2 are superfluous.

12. Similarly, paragraph 3 does not contribute to the clarity of the convention. None of the States Parties' obligations in the convention refer to the status of the host State vis-à-vis the convention, and it is doubtful if it is necessary to reaffirm this point. It has been further suggested that this paragraph finds no parallel in similar instruments (such as the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents) and that its inclusion in the current draft might well lead to mistaken interpretations of the former.

13. For the above reasons, Israel supports the deletion of these two paragraphs and the retention of paragraph 1 alone.

Duty to release United Nations personnel (art. 9 bis) 2/

14. Israel suggests that the words "as soon as possible" be substituted for "immediately". Such a provision is more realistic and will be less intrusive into the internal workings of a State Party's criminal process.

Crimes against United Nations personnel (art. 11) 2/

15. Israel respectfully submits that this article is, in fact, the true crux of the convention, and thus must be considered with utmost care. Israel does not agree with all of the changes made in the joint proposal, and suggests an in-depth consideration of each of the article's provisions, perhaps in the framework of a subcommittee.

16. Israel's primary comments in relation to this article are as follows:

(a) First, Israel supports the inclusion of the word "intentional" as proposed. The inclusion of the word in the joint proposal was, in Israel's opinion, an important element in the definition of the crimes subject to the convention. Israel tenders that the International Law Commission's interpretation of the word - as detailed in paragraph 112 of the report of the Ad Hoc Committee on the work carried out during the period from 28 March to 8 April 1994 (A/AC.242/2) - is indeed the appropriate interpretation in the current context. There can be no doubt that the convention must exclude negligent acts on the one hand, and that it cannot be expected that a State Party would invoke the convention, could it not be proven that the offender was aware, or should have been aware, that his victim was the subject of international protection. Israel therefore supports the inclusion of the word "intentional";

(b) Concerning subsection (b), Israel is in favour of defining more precisely the circumstances in which such activity will be considered to be within the scope of the convention. Inclusion of the element of intent will assist in this clarification, but it is not sufficient. Israel suggests that the word "likely" be deleted in order precisely to define relevant violent offences against property;

(c) As regards subsections (c), (d) and (e), Israel supports their deletion. As has been mentioned by other delegations, attempt and threat are not always extraditable offences and, furthermore, it is clearly not the goal of the convention to include all instances of such forms of participation in the offence. The same holds true for other forms of participation (such as incitement or accessoryship). It has rightly been noted that these are matters better left to municipal law.

17. These points become especially acute in the light of the general framework of the convention, which requires either prosecution or extradition. Under the assumption that this choice is mandatory, that is, that a State Party must either prosecute or extradite, the need for clarity is paramount.

Communication of information (art. 13) 2/

18. Israel proposes that the word "pertinent", in line 5 of paragraph 1, be replaced with the word "available".

Measures to ensure prosecution or extradition (art. 14) 2/

19. Israel suggests that a subsection (c) be added to paragraph 3 affirming the suspect's right to meet with an attorney and to be represented by counsel.

General note

20. A reading of the negotiating text shows that, in Israel's opinion, the principle of reporting of activities to the Secretary-General has been taken to the extreme. At almost every stage of the criminal process - arrest, establishment of jurisdiction, communication of information, prevention of escape of the suspect and final outcome of the proceedings - notice must be given to the Secretary-General and other States Parties.

21. Israel is of the opinion that two notices - that of the arrest and opening of proceedings (prosecution or extradition), and that of the final outcome - are more than sufficient for the purposes of the convention.

Notes

1/ See the joint proposal by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1; also reproduced in document A/AC.242/2, para. 12).

2/ The above comments refer to the negotiating text reproduced in document A/AC.242/2, p. 174.